Supreme Court, U.S.
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No. _____

IN THE

SUPREME COURT of the UNITED STATES

JOHN C. KERSEY, *Pro Se,*
Petitioner

v.

PATTY WILSON,
Respondent

On Petition For Writ Of Certiorari
To The Tennessee Court of Appeals

PETITION FOR WRIT OF CERTIOTARI

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QUESTIONS PRESENTED for REVIEW

(Factual Summary to put questions in prospective)

Petitioner and Respondent both attended the same church where, Petitioner asserted, the Respondent made a defamatory remark about Petitioner which led to this action. One of the defense attorneys made Petitioner's consent to disbarment 15 years earlier an issue or defense to the action.

Did the Appellant, who consented to disbarment 15 years before this cause of action arose, by such consent, thereby lose his rights to the due process and equal protection of the law, as stated in the Fourteenth Amendment to the United States Constitution, in all future civil proceedings in the state of his disbarment?

SUB-QUESTIONS for REVIEW

1. Did the trial judge, who dismissed Petitioner's suit for defamation on the pleadings, deny Petitioner due process by the disparaging remarks which she made from the bench toward Petitioner and by ignoring the unethical conduct of one of the opposing attorneys?

2. Did the trial judge deny Petitioner due process by conduct clearly indicating that she had *ex parte* communications with the Respondent, her attorneys, or others on Respondent's behalf?

3. Did the trial judge deny Petitioner due process by exhibiting bias when she publicly chastised Petitioner for joking with one of the clerks before the hearing.?

4. Did the trial judge deny Petitioner due process and equal protection of the law when she, *sua sponte*, enjoined Petitioner from having any contact with any members or officials of the church, thereby denying Petitioner his right to discover and bring legal action against other church members for defamation by assuring that the statute of limitations would expire pursuant to her injunction?

5. Did the Tennessee Court of Appeals deny Petitioner due process by the following acts of bias:

A. Refusing to allow Post Judgment facts that not only refuted comments made by the trial judge concerning his joking with a clerk, but also tended to show that the trial judge directed the clerks not to sign an affidavit supporting Petitioner's position on the issue?

B. Taking a slap at Petitioner in a footnote in its opinion that because Petitioner did not appear for oral argument "we must therefore base our understanding of his position solely upon his brief . . . " when Petitioner had called the clerk of the Court of Appeals before oral argument and advised that he would be unable to attend because of an injury to his leg and the clerk advised that she would notified the court?

C. Ignoring four of the five issues presented in Petitioner's brief relating to misconduct of the trial judge, mentioning them only in a footnote on the last page of its opinion?

D. Misrepresenting the holding of several cases decided by this Court and deliberately

misrepresenting the holding in one of its own prior cases?

E. Making numerous statements in its decision that the Petitioner's lawsuit was seeking to gain re-admittance to the church when there is absolutely nothing in the pleadings that even hints that the Petitioner was seeking re-admittance to the church?

F. Twisting the allegations of Petitioner's complaint as if Petitioner was the subject of disciplinary action within the church and thereby asserting "ecclesiastical abstention" as a basis for lack of jurisdiction of Petitioner's cause of action?

G. Making reference, in its opinion, to mere allegations in the complaint, made by an unethical attorney, that Petitioner was "aggressive towards church members, particularly women . . . and his determination to use the courts for vindication of purely personal grievances . . . " as if such allegations were facts when there was no evidence in the record since the Petitioner's case was dismissed on the pleadings?

H. Deliberately omitting the name of the unethical attorney who represented the eleven subpoenaed deponents, who appeared to have had *ex parte* communications with the trial judge in order to prevent disclosure of the name of the unethical attorney?

I. Holding this case for over 8 months after oral argument before issuing its opinion, thereby assuring that the statute of limitations had expired both as to slander and libel as they related to Petitioner's rights against other members of the church ?

TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES	vi
OPINION BELOW	-1-
JURISDICTIONAL STATEMENT	-2-
STATEMENT OF THE CASE	-2-
ARGUMENT	-15-
CONCLUSION	-30-
APPENDIX	-31-

TABLE OF AUTHORITIES

	PAGE
Atena Life Insurance Co. v. Lavoie, 475 U.S. 813, (1986)	20
Alley v. State, 882 S.W. 2d 810, (Tenn. Crim. App. 1998)	10
Ausley v. Shaw 193 S.W. 3d 892 (Tenn. Ct. App. 2005)	25
Gertz v. Robert Welch, Inc. 418 U.S. 323 (1974)	7,26
Greenbelt Cooperative Publishing Association v. Bresler, 398 U.S. 6 (1970);	27,28
In Re Murchinson 349 U.S. 133 (1955)	21
In Re Richardson 247 N.Y. 401 (1928)	18
Milkovich v. Lorain Journal Inc., 497 U.S. 1 (1990)	28,29
Old Dominion Branch No. 496 v. Austin, 418 U.S. 264 (1974)	28
Patterson v. New York, 432 U.S. 197 (1977)	19
Presbyterian Church v. Hull Memorial Presbyterian Church 393 U.S. 440 (1969)	23, 24
Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich 426 U.S. 696 (1976)	24

Stanley v. Illinois 405 U.S. [illegible] (1972) 22

State v. Cash 867 S.W. 2d 741,
(Tenn. Crim. App. 1993) 18

State v. Ray, 984 S.W.2d 239
(Tenn. Crim. App. 1998). 10,11

State ex rel. Wesolich v. Goeke,
794 S.W. 2d 692 (Mo. App. 1990) 10

Staub v. City of Baxley,
355 U.S. 313, 325 (1958) 15

Stones River Motors v. Mid-South
Publishing Co., 651 S.W.2d, 713
(Tenn. Ct. App. 1983) 27

Tumey v. Ohio 273 U. S. 510 (1927) 18,19,20

Ward v. Village of Monroeville,
409 U.S. 57 (1972) 22

Watson v. Jones 80 U.S. 679, (1872) 22,23

CITATION to DECISION for which WRIT IS SOUGHT

The decision of the Tennessee Court of Appeals, Middle Division, is reflected in an unreported case cited as:

KERSEY V. JONES

No. M2005-02106-COA-R3-CV

2006 WL 3952899

BASIS OF JURISDICTION

The decision of the Tennessee Court of Appeals was entered on December 29, 2006.

The Tennessee Supreme Court denied Petitioner's Rule 11 Application for a discretionary appeal by Order dated April 16, 2007 that was erroneously styled.

A second Order, with the correct style, was entered by the Tennessee Supreme Court on April 23, 2007.

Jurisdiction is conferred on this Court to grant a Writ of Certiorari by 28 U.S.C. Section 1257 (a).

CONSTITUTIONAL PROVISIONS

THE CONSTITUTION OF THE UNITED STATES

AMENDENT XIV
SECTION 1

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

Petitioner and Respondent resided in different counties, that adjoin Nashville-Davidson County. Both were members of the Hillcrest United Methodist Church in Nashville. The church was part of the larger United Methodist Church which is a connectional church with its own body of law contained in a Book of Law known as **THE DISCIPLINE.** The local church was overseen by a male Senior Pastor and a female Associate Pastor. (Complaint Par. 1-9).

As a result of certain actions by the two pastors, Petitioner filed a formal complaint against both pastors in accordance with procedures set forth in **THE DISCIPLINE.** The issues raised in that complaint are not before this Court. Shortly after filing the complaint with a committee in the local church, as required by **THE DISCIPLINE,** Petitioner wrote a poem and e-mailed it to the female Associate Pastor. The poem was based on the Ninth Commandment: "Thou shall not bear false witness against thy neighbor." The poem was

entitled "Assumptions" and was in response to the Associate Pastor's accusation of sexual harassment against Petitioner. Petitioner e-mailed the poem to the Associate Pastor during the middle of the week (Complaint Par. 10-13).

The 15th verse of the poem was as follows:

> "To conclude that evil is behind any kindness shown
> May someday deprive you of a heavenly home."

Respondent was a member of the local church committee that received the complaint which Petitioner filed against the two pastors. The following Sunday, May 8, 2005, Petitioner appeared at the church about an hour before the scheduled service and posted a copy of the poem on a bulletin board located in the main hallway leading to the sanctuary. The poem was prefaced by a note above it stating "ONE CHRISTIAN'S RESPONSE TO ALLEGATIONS OF SEXUAL HARASSMENT." In addition, the poem was slightly modified from the version that was sent to the Associate Pastor. The second line of the 15th verse was changed to read: (Complaint Par. 15 -16).

> "May someday deprive us of a heavenly home."

A copy of the poem is found in the Appendix at pp. 54 & 55.

Shortly after posting the poem, Respondent removed it from the bulletin board. Several minutes later, when Petitioner returned, he was met by a small group of the Associate Pastor's supporters. A verbal confrontation ensued and Petitioner walked away from the group and sat on a couch in the reception area. Unbeknown to Petitioner, Respondent had called the police. When the police arrived, Petitioner was seated on the couch and the officer walked by Petitioner without even noticing him. (Complaint Par. 17 - 28).

At this point, Respondent entered behind the officer, pointed her finger at Petitioner and in a loud voice said:

"That's him! That's him! Put him out! Put him out!

HE WROTE A POEM THAT THREATENED THE LIFE OF ONE OF OUR MEMBERS."

The statement made by Respondent was heard by several members of the church as well as the officer. After some discussion, the Senior Pastor asked the Petitioner to leave, which he did. Several weeks later Petitioner received a letter from the Trustees of the local church directing him not to return until the dispute was resolved. Petitioner was later advised that the letter that was sent by the Trustees was against the advice of the Bishop of the Tennessee Conference of the United Methodist Church. (Complaint Par. 27 - 32) and (Petitioner's Motion to Amend the Complaint at R. 43).

Several weeks later, Petitioner filed a *pro se* suit for defamation against Respondent. Respondent, through her attorney, filed an answer to the complaint denying that she made the defamatory statement.

In addition, shortly thereafter, Petitioner issued 10 subpoenas *duces tecum* for attendance for depositions to other members of the church and one to the Senior Pastor. The subpoenas directed the deponents to produce any written statements that they had received concerning Petitioner. Several of these members had been members of another United Methodist Church along with Petitioner and had known Petitioner for over 20 years.

Petitioner planned to establish proof of the damage to his reputation, seek proof that other supporters of the female Associate Pastor had made defamatory remarks concerning Petitioner, and that the Associate Pastor had made numerous

unfounded allegations of sexual harassment against others. He also intended to prove that the members of the church were aware of problems of the Associate Pastor because they frequently talked about her problems behind her back.

Because these members, along with the Senior Pastor, did not want to be forced to give testimony under oath, which would disclose remarks about the Associate Pastor's problems, they hired their own attorney to try and quash the subpoenas. Petitioner suspects that the attorney was actually paid by the local church. This attorney, John Wagster, in every pleading which he filed, referred to Petitioner as "this disbarred attorney" or words to that effect. He also made a statement that Petitioner "purports to represent himself." In addition, attorney Wagster filed a pleading that hinted he knew that the trial judge would dismiss the complaint. (Motion to Quash; R. pp. 17 & 18). Petitioner has since learned from Martindale Hubbell Legal Directory, that attorney Wagster received a B.D. degree several years before he received his law degree.

Because Petitioner had been advised by another attorney that attorney John Wagster received special treatment from the trial judge, Petitioner filed a motion asking that the trial judge disclose, on the record, any communications that she had with the said attorney, the Respondent, or any potential witnesses in the case. Petitioner also filed a motion asking the trial judge to order attorney Wagster to abide by professional ethics which required that he treat opposing litigants with respect. Even the local rules of the court required counsel to treat adverse parties with respect. (Motions at R. 23 - 24 & 46 - 51).

Subsequent to filing an answer, Respondent's counsel filed a motion to dismiss on the grounds that the allegations of damages were insufficient and that Petitioner "invited" the

defamatory comment, (which respondent denied making), by the posting the poem on the bulletin board. (R. 20 - 22).

In addition, Petitioner filed a motion to amend the complaint to set forth other allegations supporting the damage to his reputation. (R. 43 - 44).

All motions were set to be heard on the same Motion Day along with motions in numerous other cases. Petitioner appeared an hour before the hearing hoping to catch attorney Wagster meeting or communicating with the trial judge. Petitioner noticed that the motions in this case were not posted on the Motion Docket outside the courtroom. When Petitioner inquired from a deputy clerk as to why the motions were not on the docket, she asked for assistance because she was relatively new at her job. While the other clerks sought an answer as to why the motions were not on the docket, Petitioner joked with the new deputy clerk. Nothing Petitioner said seemed to offend the deputy clerk in any way.

When the motions were heard, the trial judge made several disparaging remarks toward Petitioner, denied having any *ex parte* contact with anyone concerning the case, and the trial judge publicly chastised the Petitioner for joking with the deputy clerk. In addition, when Petitioner denied making any offensive remarks to any clerk, the trial judge directed Petitioner to stay away from the clerks. Then the trial judge asked: "Mr. Kersey, other than your allegations of your good reputation, what other damages have you suffered?" (See Appendix P. 58)

Regarding Petitioner's motion that the trial court order attorney Wagster to abide by professional ethics, the trial made this response:

> "And I can assure you that your motion to make these lawyers abide by professional ethics, that this court always makes lawyers abide by professional ethics."(Appendix P. 56)

Petitioner then asked the trial judge if the court was of the opinion that Mr. Wagster had abided by professional ethics, to which the trial judge made this response:

> "Well, I told you what this Court's policy is, and until something takes place in this courtroom or in some pleadings, then at that time I'll make some determination. I just want to clarify what this Court's position is." (Appendix P. 57)

Obviously the trial judge was so bias against Petitioner that she did not even read the Motion that cited several instances in the pleadings in which attorney Wagster referred to Petitioner as "this disbarred attorney" or words to that effect.

Attorney Wagster did what many other attorneys have done, when he quoted in his memorandum supporting a motion to dismiss from this Court's decision in *Gertz v. Robert Welch, Inc.*, that an opinion was not actionable because:

> "However pernicious an **opinion** (emphasis added by attorney Wagster) may be, we depend for its correctness not on the conscience of judges and juries but on the competition of other ideas." *Gertz v. Robert Welch, Inc.* 418 U.S. 323, 340, 341 (1974).

This misrepresentation of the law was also called to the attention of the trial judge, but she ignored it.

No evidence was offered at the hearing.

The judge also stated that Petitioner had never been in her court before. Supposedly, this was to indicate that she did not know Petitioner. But, later in the hearing, the judge stated: "Mr. Kersey, this Court is well aware of your history." (Appendix P 58). The trial judge also remarked that she believed Petitioner had destroyed his reputation a long time ago. Even though the trial judge denied having any *ex parte* communications with anyone involved with the lawsuit, she made two revealing remarks during the hearing:

> "Mr. Wagster are you getting into this?" Mr. Wagster responded: " Your honor, I'm here on behalf --"
>
> The judge cut attorney Wagster off and then stated: "I know why you're here . . . ." (Tr. P. 22)

The trial judge then ask Petitioner a most interesting question:

> "[a]nd these people that are in the courtroom today have the absolute right to decide who comes to their. Would you agree?" (Tr. P. 30).

Then the trial judge enjoined Petitioner from having any contact with anyone at the church, thereby preventing Petitioner from gathering any information about others who might have made defamatory comments about Petitioner. Before issuing her injunction, the judge made the following comment: "The Court's going to do something unusual this morning, Mr. Kersey." (Appendix P. 58).

She also suggested that Petitioner's only remedy was to find another church. She prefaced her opinion by this question: "Does this Court have the power to require the Methodist Church to let you attend? I don't think so." (Appendix P.57). Nowhere in the complaint is there even a hint that Petitioner was seeking to gain readmittance to the church.

Petitioner has asked both the Tennessee Court of Appeals and the Tennessee Supreme Court to explain how the trial judge knew that people from the church were in the courtroom as spectators. Both courts have ignored Petitioner's question. See Appendix pages 56 - 60 for a more detailed transcript of the judge's remarks.

Later in the afternoon, after the hearing, the Petitioner spoke with the deputy clerk and the chief clerk about his joking with the deputy clerk. The deputy clerk said she was not offended by any remarks Petitioner made and the chief clerk indicated that he was unaware of any complaints made to the judge. Several days later, when Petitioner asked the two clerks to sign an affidavit which memorialized their earlier conversations with Petitioner, both indicated that they "had been advised not to sign any affidavit." (Appendix P. 65)

Petitioner asked the Court of Appeals to consider what he had learned from the two clerks in a motion to consider post judgment facts, but the Court of Appeals denied Petitioner's motion. (Appendix PP. 53 & 63).

Petitioner then filed an appeal with the Court of Appeals. In his brief, Petitioner raised five issues relative to the trial judge's misconduct and one issue challenging the dismissal on the pleadings. The Court of Appeals ignored four of the five issues concerning judicial misconduct of the trial judge, mentioning them only in a footnote on the last page of its opinion. (Petitioner's brief at pp. 1 & 2).

In its opinion, however, the Court of Appeal did vacate the injunction because it "inhibits Mr. Kersey's freedom of association. . . " At least the Court of Appeals gave lip service to one of Petitioner's Constitutional right. Of course, by that time, the injunction had accomplished the trial judge's

purpose: it allowed the six month statute of limitation for slander to expire.

In Petitioner's brief, at page 28, he noted the following:

"In 1994 the Court of Criminal Appeals [of Tennessee] declared an axiom of American Law:

> ' . . . it is a fundamental principal of due process that a judge presiding at a trial "must be sufficiently neutral and free of preconceptions about the factual issues to be able to render a fair decision." ' *Alley v. State* 882 S.W. 2d 810, 819-820 (Tenn. Crim. App. 1998).

Petitioner went even further to try and persuade the Court of Appeals that due process of law required an unbiased trial judge when he referenced, at page 29 of his brief, to the Tennessee Court of Criminal Appeals quotation in *Alley* from a Missouri case:

> "[T]he attitude of personal enmity towards the party or in favor of the adverse party to the other's detriment . . . . Prejudice refers to a mental attitude or a disposition of the judge towards a party: either a hostile feeling or a sprit of ill-will against one of the litigants, or a favoritism toward one of them" Quoted from *State ex rel. Wesolich v. Goeke*, 794 S.W. 2d 692, 697 (Mo. App. 1990).

Petitioner also quoted from another Tennessee case involving James Earl Ray in an attempt to persuade the Court of Appeals that he had, as part of his right to due process, the right to be heard by an impartial judge.

> "Regardless of the conduct of the parties or counsel, '[a] judge shall not allow . . . political, or other relationships to influence the judge's judicial

> conduct or judgment.' " Sup. Ct. Rule 10, Canon 2B. *State v. Ray*, 984 S.W.2d 239, 242 (Tenn. Crim. App. 1998).

It is Petitioner's position that he made a respectable effort to get the Tennessee Court of Appeals to consider his claim that the trial judge violated his right to due process of law guaranteed by the U.S. Constitution and that the said court had a fair opportunity to address the federal question, but declined to do so.

On December 29, 2006 the Court of Appeals for the Middle section of Tennessee affirmed the decision of the trial court. (Appendix P. 32).

The appeals court stated that the "Defendant" filed a motion to quash the subpoenas. No where in its opinion does the court even allude to attorney Wagster's involvement in the case. (Appendix PP. 32 - 49 for the Court's decision).

In its decision, the Tennessee Court of Appeals set forth three reasons for supporting the trial court's judgment. First, the court held that the alleged defamatory remark was an opinion about the meaning of the poem, as opposed to a statement of fact.

Secondly, the appeals court held that the complaint only referred to Petitioner's loss of reputation in general terms and did not offer specific allegations that the loss of reputation was attributable to the alleged defamatory statement.

Lastly, the Court of Appeals held that the action was barred by the doctrine of ecclesiastical abstention, since the Respondent was a member of the committee where Petitioner filed the complaint against the church pastors, the defamatory remark was an integral part of the church disciplinary proceeding.

Petitioner, who has not been licensed to practiced law in 17 years and was unable to afford an attorney, then filed a *pro se* Rule 11 Application for a discretionary appeal with the Tennessee Supreme Court. In Petitioner's opening remarks he stated at page 3 of the Application the following:

> "Although Petitioner surrendered his law license in 1990, he did not surrender his right to due process of the law guaranteed by the United States Constitution."

Petitioner gave the Tennessee Supreme Court notice that he was raising, not only a constitutional challenge to the actions of the trial judge, but also a constitutional challenge to the judges on the Tennessee Court of Appeals. In addition, Petitioner asked the Tennessee Supreme Court to take judicial notice (as if they had not already done so) that the trial judge was the wife of a powerful, long term State Senator. (Rule 11 Application at page 15).

In Petitioner's Rule 11 Application, he raised the following issues with the Tennessee Supreme court:

> (1) Did the Court of Appeals for the Middle Division err in ignoring 5 issues pertaining to misconduct of the trial judge?
> (2) Did the Court of Appeals err in holding that there was no evidence that the trial judge engaged in *ex parte* communications with the Defendant or her attorneys?
> (3) Did the Court of Appeals err in holding that there was no evidence that the trial court's judgment was the "product of bias," thereby requiring a litigant to be able the read the mind of a trial judge in order to prove that unethical conduct had an effect on the judge's decision?

(4) Did the Court of Appeals err in refusing Plaintiff's Motion to Consider Post Judgment Facts, when such facts would have helped establish bias on the part of the trial judge?

(5) Did the Court err by holding this case more than 8 months after oral argument before rendering its decision in an apparent attempt to help the trial judge's effort to prevent Plaintiff from discovering evidence against other potential defendants until after the expiration of the statute of limitations as to defamation?

(6) Did the Court of Appeals err when it held that the alleged defamatory statement was somehow protected as an "opinion?"

(7) Did the Court of Appeals err in holding that Plaintiff's claim for damage to his reputation was insufficient when, in a footnote to its opinion, the Court of Appeals noted that in an amendment to the complaint Plaintiff alleged that he had lost the friendship of several people as a result of the alleged defamatory comment.

(8) Did the Court of Appeals err in its holding that Plaintiff's claim for damages was barred by the doctrine of "ecclesiastical abstention" when there is absolutely no proof in the record that any adjudicatory body of the United Methodist Church, beyond the local congregation, that has even considered the issues addressed by the trial court or the Court of Appeals?

(9) Did the Court of Appeals commit judicial misconduct by citing several cases in support of its position, when in fact the cases cited held contrary to the court's position?

The Tennessee Supreme Court denied Petitioner's Rule 11 Application. There is some issue as to the effective date of

that denial. Petitioner had previously appealed a speeding ticket which was styled: STATE v. KERSEY. The Tennessee Supreme Court issued an order on April 16, 2007 denying Petitioner's Rule 11 Application styled "STATE v. KERSEY" (in which the Court also denied Petitioner a Rule 11 Application) which contained the case number of the case at bar.

Then on April 23, 2007, the same Court issued another Order denying Petitioner's Rule 11 Application which contained the correct case number. At issue is whether Petitioner's 90 days began to run from April 16 or April 23. Whether this was a clerical mistake or an intentional act, Petitioner is not likely to ever know. Petitioner still wonders that if he had not noticed the error, and had waited another 90 days for an order from the Tennessee Supreme Court, which he recognized by the correct style of the case, if his 90 days to file this Petition would have expired. See Appendix A PP. 50 & 51 for the orders.

The Petitioner wants to point out that, although he has not been involved in any appellate cases from 1990 to 2005, he has been involved in four cases in the past 2 1/2 years. The first was the case of *State v. Kersey*. The second is the case at bar and the third and fourth cases, now pending, pertain to officials refusal to allow inspection of public records. A Defendant in one of those cases is a court clerk.

Because of the bias of the Court of Appeals for the Middle Division in this case, Petitioner moved for the judges to recuse in the two pending cases and requested that the Tennessee Supreme Court assign these cases to the judges from one of the other grand divisions; Eastern or Western. Each judge, by separate order, refused to recuse. Petitioner then moved that the Tennessee Supreme Court order the judges on the Court of Appeals to recuse. In a per curiam

order the Tennessee Supreme Court denied Petitioner's motion.

As amazing as it might seem, however, once the Tennessee Supreme Court became convinced that Petitioner was going to seek this Writ when he filed a motion in the state's highest court to stay the costs mandate, lo and behold, the other two remaining cases were assigned to the COA for the Eastern Section.

ARGUMENT - SECTION A

REASONS FOR GRANTING THE WRIT

"This is one of those small cases that carry large issues" Justice Frankfurther in his dissent. *Staub v. City of Baxley* 355 U.S. 313, 325 (1958).

Due process and equal protection of the law are not "rights" available to Tennessee citizens in civil cases. Rather they are "privileges" that are bestowed on selected litigants by trial and appellate judges who are deemed by such judges as being "worthy" of such privileges. The fraternal association between judges can only accurately be described as an "I pat your back, you pat my back" society. This case demonstrates how such a society operates.

This case is about more than the trial judge's dismissal, on the pleadings, of Petitioner's defamation action against the Respondent. It is about more that the trial judge's destruction of Petitioner's right to pursue redress against others who may also have been guilty of making defamatory statements by issuing, *sua sponte,* an injunction enjoining Petitioner from communicating with others at this church.

In Petitioner's mind, this case involves even more than the judges on the Tennessee Court of Appeals and the Tennessee Supreme Court ignoring the unethical conduct of the trial judge. The real significance of the case challenges the right of trial or appellate judges to decide which of its citizens are considered "worthy" of due process and equal protection of the law.

Those who might very well be included in this "unworthy class" consist of any lawyer, doctor, accountant, engineer or other professional who has lost or surrendered his or her professional license and has tried to rebuild their lives and reputations. It could also include any person who has been convicted of a crime and has completed the specified punishment and has tried to rebuild his or her life and reputation. Perhaps an individual, who the judge or judges simply do not like, might become part of this group. Undoubtedly, any individual who had been a pain in the side of judges for years by shining the spotlight on their improper, unethical, corrupt and even illegal conduct would be put near the top of this "unworthy class."

This Court dealt with a member of a similar "unworthy" class when it addressed a state's presumption that the father of an illegitimate child was deemed "unfit" when he sought custody of his children.

What Petitioner finds anomalistic is that those who have been found guilty of, or even admitted to, the most heinous crime of first degree murder and have been sentenced to death, have consistently been held by this Court to possess the "rights" of due process and equal protection of the law. Yet all the while, those of us who have been relegated to this "unworthy class" are routinely denied the same rights in civil cases.

Those responsible for the mutation of these "rights" into mere "privileges" rest with assurance that such mutations will be undiscovered in a legal system that works in their favor. Judicial obligations are replaced by politics and influence. When that influence extends to the Court of Appeals in any state, such destruction of "rights" will continue. An appeal to a state supreme court in a civil case is not a right, but only a privilege to be granted in the "discretion" of the state's highest court.

Even this Court advertises, that review of such cases is "rarely granted." In fact, instructions for litigants produced by this Court announce that the Writ of Certiorari is granted to less than 1% of those who make such a request.

Assuming, for the sake of argument, that the same percentage applies to the granting of discretionary appeals by the states' highest courts, a trial judge, who has political influence with the lower level of appellate judges, can rest assured that his or her decision has a 99% probability of being affirmed.

ARGUMENT- SECTION B

MISCONDUCT by the TRIAL JUDGE

One of the reasons for the Revolutionary War was to be free from the control of the Church of England. Now, more than 230 years later, citizens are still faced with churches that have the power to control their rights. Such control can almost never be established by direct evidence, because seldom does a litigant have the opportunity to hear a conversation or read an e-mail between church officials or their attorneys, and a trial judge. Such communications are established by inference from circumstantial evidence. Since there are people who are spending the rest of their lives in jail

based on circumstantial, such evidence must not be overlooked.

No litigant should be forced to surrender his rights simply because a judge has denied such *ex parte*, communications. A judge who will engage in unethical conduct will surely lie about his or her actions if challenged.

The trial judge made several comments that she was aware of Petitioner's past. Since Petitioner consented to disbarment 15 years before this course of action arose, he practiced in another county, and the trial judge stated that Petitioner had never been in her court, then her "knowledge" about Petitioner's past was either conveyed to her, *ex parte*, or she did some investigation on her own.

The Tennessee Supreme Court has condemned a fact-finding mission of a trial judge who went to the high court clerk's office to gather information. In its decision, the Tennessee Supreme Court quoted from the great justice Benjamin Cardozo: " ' judges are not adjuncts or advisors, much less investigating instrumentalities . . . ' " *State v. Cash* 867 S.W. 2d 741, 749 (Tenn. Crim. App. 1993) quoting from *In Re Richardson* 247 N.Y. 401 (1928).

This Court noted 80 years ago that:

> "The requirement of due process of law in judicial procedure is not satisfied by the argument that men of the highest honor and the greatest self-sacrifice could carry it on without danger of injustice. Every procedure which would offer a possible temptation to the average man as a judge to forget the burden of proof required . . . or which might lead him not to hold the balance nice, clear and true between the State . . . denies due process of law." *Tumey v. Ohio* 273 U. S. 510, 532 (1927).

Although *Tumey* was a criminal case, there has not been any distinction made by this Court, which Petitioner can detect, between the right to due process in a criminal case and the right in a civil case. In *Tumey*, the judge had a pecuniary interest in convicting the defendant and in holding that such interest violated due process this Court said:

> "But it certainly violates the Fourteenth Amendment, and deprives a defendant in a criminal case of due process, to subject his liberty or property to the judgment of a court the judge of which has a direct, personal, substantial, pecuniary interest in reaching a conclusion against him in his case." *Tumey* at 523.

Even though the Court in *Tumey* did not address such interest as "political influence" or obvious bias, per se, this Court did make a statement that definitely applies to the present case:

> "No mater what the evidence was against him, he had the right to have an impartial judge." *Tumey* at 535.

In this case there was not any evidence against Petitioner, not even an affidavit, but, both the trial judge and the Court of Appeals treated Petitioner as if the evidence was stacked against him. For instance, in its opinion, the Court of Appeals makes the following statement:

> "We note that the pleadings *suggest* (emphasis added) that Mr. Kersey's aggressive approach towards church members, particularly women, has been uncomfortable for them, and that his determination to use the courts for vindication of purely personal grievances worsens those problems." (Appendix P. 47)

Petitioner suspects that every plaintiff in a defamation action would fit the description of a person that was determined "to use the courts for vindication of personal grievances" such as defaming one's reputation. Petitioner has always operated under the notion that one of the main purposes of our judicial system was for the vindication of personal grievances. Apparently, such is not the purpose of these Tennessee Courts.

This Court cited *Tumey* and quoted from *Patterson v. New York,* 432 U.S. 197, 201-202 (1977) in a 1986 case which involved a pecuniary interest of an appellate judge:

> "[I]t is normally within the power of the state to regulate procedures under which its laws are carried out . . . and its decision in this regard is not subject to proscription under the Due Process Clause *unless it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental."* (Emphasis added). *Atena Life Insurance Co. v. Lavoie* 475 U.S. 813, 821 (1986).

If this case does not demonstrate the violation of a "fundamental" principle of justice, then Petitioner wonders how any unethical or bias act of a judge would ever offend due process. In *Atena* this Court also referenced the ABA Code of Judicial Conduct, Canon 3C (1)(a) (1980) which has been adopted in Tennessee: "A judge should disqualify himself . . .where he has a personal bias or prejudice against a party." *Aetna* at 820.

This Court also addressed the appearance of bias in a case years before *Aetna* when it stated:

> "A fair trial in a fair tribunal is a basic requirement of due process. Fairness of course requires an absence of actual bias in the trial of cases. But our system of law has always endeavored to prevent even the probability of unfairness. . . . Such stringent rule may sometimes bar trial by judges who have no actual bias and who would do their best to weigh the scales of justice equally between contending parties. But to perform its high function in the best way 'justice must sometimes satisfy the appearance of justice.' " *In Re Murchison* 349 U.S. 133, 136 (1955).

Perhaps Petitioner is allowing his frustrations to cloud his reasoning, but neither the trial judge in this case or the judges on the Tennessee Court of Appeals performed their "high function."

In addressing an Ohio statute that required disqualification of a bias judge, much like the Code of Judicial Conduct would require disqualification, this Court has held that the reliance on such a statute was not a sufficient safeguard.

> "If this means that an accused must show special prejudice in his particular case, the statute requires too much and protects too little." *Ward v. Village of Monroeville*, 409 U.S. 57, 61 (1972).

Although *Ward* related to traffic offenses, surely a civil litigant has the same rights.

Petitioner is able to relate to the father who brought his concerns before this Court in 1972. The Petitioner in 1972 was the father of three illegitimate children and when their mother died the State of Illinois presumed, that since the

father was not married to the mother, he was "unfit" to raise the two remaining minor children.

Petitioner especially relates to this Court description of the father as "impecunious as he is." *Stanley v. Illinois* 405 U.S. 645, 648 (1972). In that case, this Court held that the Illinois presumption was "inescapably contrary to the Equal Protection Clause." *Stanley* at 658.

Anyone who reads just the portion of the transcript that memorializes the trial judge's comments in this case is overcome by the "appearance of bias." Such may also be said of the Tennessee Court of Appeals decision when it is compared to the actual holdings of the cases cited in its opinion.

ARGUMENT - SECTION C

TENNESSEE COURT of APPEALS DECISION

The Tennessee Court of Appeals affirmed all of the trial court's judgment except for the injunction. The court's decision is based on three principals: (1) the courts lack jurisdiction because of ecclesiastical abstention; (2) insufficient allegations of damages; and (3) the alleged statement was an opinion.

In the first case decided by this Court related to controversies among members of a church, this Court prevented the secular courts from inquiring into matters concerning questions of "discipline or of faith or ecclesiastical rule" which had been "decided by the highest of these church judicatories. . ." *Watson v. Jones* 80 U.S. 679, (1872).

The Tennessee Court even cited *Watson* in its opinion. "[W]henever the questions of disciple, or of faith, or ecclesiastical rule or custom, or law have been decided by the

highest of these church judicatories to which the matter has been carried the legal tribunals must accept such decisions as final, and binding on them. . ." (Court's decision at pp. 7-8).

This Court in *Watson,* noted, however, that disputes might arise between church members that pertained to personal rights. This Court stated:

> "Or if it [the highest church court] should at the instance of one of its members entertain jurisdiction as between him and another member as to their individual right to property, real or personal, **the right in no sense depending on ecclesiastical questions** (Emphasis added), its decision would be utterly disregarded by any civil court where it might be set up." *Watson* at 678.

Petitioner finds it amazing that the Tennessee Court of Appeals fails to mention the "highest of these church adjucatories" which had addressed the case at bar. The Tennessee Court did, however, do what it has consistently done in this case, it all but ignore one of Petitioner's contention by relegating to a footnote. Footnote No. 2 mentions that Petitioner asserted that the action of the church trustees was "against the advice of the Bishop of the Tennessee Conference of the United Methodist Church." Although the issue of defamation was not before any church body, it is clear that the church's higher authority did not support the local church's action.

The Tennessee Court of Appeals also cited this Court's decision in *Presbyterian Church v. Hull Memorial Presbyterian Church* 393 U.S. 440 (1969) in support of its decision that ecclesiastical abstention prevented jurisdiction in this case. But, *Hull Memorial* involved a church property dispute. This Court appeared, by its language, to limit ecclesiastical abstention to church property disputes,

"controversies over religious doctrine and practice" and other "purely ecclesiastical" matters. *Hull Memorial* at 605 and 606.

Of course the case at bar does not involve any of the matters stated in *Hull Memorial.*

Several years later this Court also limited ecclesiastical abstention to "matters of discipline, faith, internal organization, or ecclesiastical rule, custom or law . . . a matter which concerns theological controversy, church discipline, ecclesiastical government, or the conformity of the members of the church to the standard of morals required of them. . ." *Serbian Eastern Orthodox Diocese for the United States of America and Canada v. Milivojevich* 426 U.S. 696, 713, 714 (1976).

Again none of the maters stated in *Milivojevich* are present in the case at bar.

Since the Tennessee Court of Appeals could not find any case that supported its decision based on "ecclesiastical abstention" as the facts appeared in the complaint, it decided to subvert Petitioner's complaint. The Court of Appeals decided that the Petitioner's complaint really involved Petitioner suing to gain readmittance into the church. Apparently the court decided to follow a statement made by Respondent's counsel "suggesting that the exclusion of Mr. Kersey from the church was beyond the scope of judicial review. (Decision at p.3).

It almost appears that the Court of Appeals asked Respondent's counsel to help prepare its decision.

The Tennessee Court then turned to one of its own decisions to support its position. The courts must look at "whether the slanderous or libelous statements were made during the

course of an ecclesiastical undertaking." Citing *Ausley v. Shaw* 193 S.W. 3d 892, 859(sic) (Tenn. Ct. App. 2005). What is most interesting is what the Tennessee Court **actually held** in *Ausley*.

In Ausley, a former pastor filed suit for defamation after he was terminated as pastor and then in a confrontation with some church members and in the presence of law enforcement, the pastor was called a "witch doctor," a "voodoo Preacher'" and a "dog." The Tennessee Court of Appeals **reversed** the trial court's dismissal of the defamation action and held that the alleged defamatory statements were not intertwined with any disciplinary proceedings. *Ausley* at 896. Of course the judges that decided *Ausley* were not the same judges that decided the present case.

If an attorney intentionally misrepresents the law he is guilty of unethical conduct. Since judges are also attorneys, Petitioner assumes the judges on the Court of Appeals are also guilty of unethical conduct.

Secondly, the Tennessee Court concluded that Petitioner failed to allege sufficient damage to his reputation. The court cites only one case by this Court relative to damages: *Gertz*. 418 U.S. 323 (1974).

Petitioner must admit that he erred in his complaint when he mentioned, in paragraph 36, that [Respondent's] statement was "defamatory *per se*," thereby entitling Petitioner to punitive damages. Of course *Gertz* eliminated this "oddity in tort law"
of presumed damages. But according to the Tennessee Court Petitioner's complaint "refers in the most general terms to damages in the form of reputation. . . " (Decision at p. 7.)

But this Court in *Gertz* stated:

> "Suffice it to say that actual injury is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, personal humiliation, and mental anguish and suffering." *Gertz* at 350.

In paragraphs 34 of his complaint, Petitioner alleged that the defamatory statement was "injurious to Plaintiff's reputation." In paragraph 35 of the complaint Petitioner alleges that the defamatory statement caused him "great mental anguish and emotional suffering." Of course the purpose of discovery is to prove the connection between the defamatory statement and the alleged injury and Petitioner was prevented from taking any discovery. Suffice it to say that Petitioner's allegations meet the standards set forth by this Court in *Gertz*.

Lastly, the Tennessee Court of appeals held that the alleged defamatory statement was protected as an "Opinion." In its decision the court stated:

> "We must also note that a poem is a work of the imagination which allows the minds of both poets and readers to venture into areas that lie beyond the realm of verifiable facts. Just as the poet is granted 'poetic license,' so the reader enjoys considerable latitude to interpret the meaning of a poem in a way that matches his or her understanding. Thus, we consider Ms. Wilson's alleged statement . . . to be a matter of opinion . . . ."

The Tennessee Court of Appeals does not give any citation to its quote of a "poetic license." Clearly the language used implies that a poet has a license to defame and to slander. Nor does the court give any citation to its holding that one

who reads a poem is somehow granted a license to accuse the poet of threatening someone's life.

The court cited a Tennessee case to support its opinion: *Stones River Motors v. Mid-South Publishing Co.* 651 S.W. 2d, 713 (Tenn. Ct. App. 1983). In this case the original Tennessee court referenced numerous cases decided by this Court. When cited in this case, however, the Court of Appeals apparently failed to read the entire case. On the same page cited by the court is this statement:

> "But an expression of opinion that is not based on disclosed facts or assumed facts and therefore implies that there are undisclosed facts on which the opinion is based, is treated differently. . . [in that case] the defendant is liable." *Stones River* at 720, 721.

According to the court in this case, the fact that the Respondent stated "He wrote a poem that threatened the life of one of our members" was sufficient disclosure of facts to prove that the statement was an opinion. If one follows this logic and applies it to a church, then the under the following circumstances, a statement would not be actionable. If a preacher, in his sermon, made reference to the biblical phrase: "The wages of sin is death," and one who heard the sermon said the next day to members of the church who did not hear the sermon, "The preacher preached a sermon that threatened my life," such a statement would not be actionable.

Such a notion would be absurd, because enough facts were not disclosed to demonstrate that the statement was an "opinion."

The court then cites several cases decided by this Court to support its decision: (1) *Greenbelt Cooperative Publishing*

Association v. Bresler, 398 U.S. 6, (1970); (2) *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264 (1974) and (3) *Milkovich v. Lorain Journal Inc.* 497 U.S. 1 (1990). In examining each of these cases it is clear that the Tennessee Court of Appeals, at the very least misunderstood the law.

The facts of the *Greenbelt* case are totally different from the case at bar. In this case a member of the Maryland House of Delegates, who was also a private real estate developer had been involved in several "tumultuous City Council meetings." *Greenbelt* at 7. The discussions at the meetings were regularly reported in the news columns of the Greenbelt News Review. After on heated meeting, several people became critical of the negotiating tactics of Mr. Bresler.

The Newspaper reported in detail what occurred at the meetings and also reported that some people had characterized Mr. Bresler's tactics as "blackmail." The newspaper reported that "some people had characterized Bresler's negotiating position as "blackmail." Bresler sued the newspaper for defamation. *Greenbelt* at 7-9.

"It is undisputed that the article published in the Petitioner's newspaper were accurate and truthful reports of what had been said at the public hearings . . . ." *Greenbelt* at 12. In *Greenbelt* there were no undisclosed facts.

In *Old Dominion*, according to the opinion written by the Tennessee court, this Court held that one can call another person " 'a traitor to his God, his country, his family and his class' " without fear of any civil liability. The Court of Appeals quotes from this case that such language was:

> " 'merely rhetorical hyperbole, a lusty and imaginative expression of contempt felt by union members towards those who refused to join.' "

Petitioner asserts that the Tennessee Court of Appeals deliberately took this case out of context, in an effort to support an otherwise unsupportable position. In fact, the case deals with words spoken during attempts by a Union to get others to join the union. The case deals with special provisions of Section 7 of the NLRA. The case also deals with an Executive Order relating to union activities. It does not deal with ordinary defamation. In *Milkovich* this Court made the following observations regarding opinions:

> *Gertz* was not intended to create a wholesale defamation exemption for anything that might be labeled 'opinion,' . . . Not only would such an interpretation be contrary to the tenor and context of the passage, but it would also ignore the fact that expressions of 'opinion' may often imply an assertion of objective fact . . .If a speaker says, 'In my opinion John Jones is a liar,' he implies a knowledge of facts which lead to the conclusion that Jones told an untruth. Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18, 19. (1989).

CONCLUSION

In the 34 years since I graduated from the Vanderbilt School of Law, I have never read a case where the law was misrepresented as much as it has been in this case. Most of the cases whose holdings have been misstated, were cases decided by this Court. Based on my experience with the Tennessee Judicial System, 17 years as a licensed attorney and another 17 years as a careful observer, including my experience with certain court clerks, I can rest assured that if

I ever filed another civil case in Davidson County, it would be "assigned" to Judge Barbara Haynes's court. And to think we call this process a "System of Justice."

Attorneys are well aware of the unethical actions of some judges, but they have chosen to do nothing. They justify this decision by stating that if they take action, judges will retaliate against present and former clients. These attorney put their obligations to their clients above the ideal of "justice" expressed in the Constitution, I do not share their position, because corruption is destroying the fabric of this nation.

If the facts and circumstances of this case meet this Court's definition of due process of law, then such concept, as well as the ideal of justice protected by the Constitution, is nothing more than an idealistic dream far removed from reality.

For the reasons stated herein, Petitioner respectfully requests that this Court grant him the Writ of Certiorari.

JOHN C. KERSEY

No. _____

IN THE

SUPREME COURT of the UNITED STATES

JOHN C. KERSEY, *Pro Se,*
Petitioner

v.

PATTY WILSON,
Respondent

On Petition For Writ Of Certiorari
To The Tennessee Court of Appeals

APPENDIX

TO

PETITION FOR WRIT OF CERTIOTARI

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 4, 2006 Session

JOHN C. KERSEY v. PATTY WILSON

Circuit Court for Davidson County
No. 05C-1633

No. M2005-02106-COA-R3-CV

Date of entry: December 29, 2006

JUDGMENT

This cause came on to be heard upon the record on appeal from the Circuit Court for Davidson County, briefs, and oral argument; upon consideration whereof, this Court is of the opinion that the final judgment of the trial court should be affirmed in part, vacated in part, and the case remanded for further proceedings which may be necessary.

In accordance with the opinion of the Court filed herein, it is, therefore, ordered and decreed by this Court that the judgment of the trial court is affirmed in part, and vacated in part. The cause is remanded to the Circuit Court for Davidson County for such further proceedings as may be necessary in accordance with the opinion herein.

Costs of this appeal are taxed against the Appellant, John C. Kersey, for which execution may issue if necessary.

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
April 4, 2006 Session

JOHN C. KERSEY v. PATTY WILSON

Appeal from the Circuit Court for Davidson County
No. 05C-1633 Barbara Haynes, Judge

No. M2005-02106-COA-R3-CV

Date of entry: December 29, 2006

A member of a Methodist Church sued another member of the same church for defamation because of a remark she allegedly made about a poem he had posted on a church bulletin board. The defendant filed a motion for a judgment on the pleadings. After a hearing, the trial court granted the motion and also enjoined the plaintiff from having any further contact with officials or members of the church. We affirm the judgment on the pleadings, but vacate the court's injunction because it is overly broad.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed in Part and Vacated in Part

PATRICIA J. COTTRELL, J., delivered the opinion of the court, in which WILLIAM B. CAIN and FRANK G. CLEMENTS, JR., JJ., joined.

John C. Kersey, Smyrna, Tennessee, Pro Se.

George H. Cate, Jr., Nashville, Tennessee, for the appellee, Patty Wilson.

OPINION

I. A CONTROVERSY ABOUT A POEM

Plaintiff John Kersey was a member of the Hillcrest United Methodist Church in Davidson County. According to his complaint, Nancy Neelley, the female pastor of the church, made unfounded accusations of sexual harassment against him. Mr. Kersey responded by filing a complaint with the church's Staff-Parish Relations Committee against its two pastors, one male and one female. He also wrote a poem, entitled "Assumptions," which he sent via e-mail to pastor Neelley.

The poem tells a story in sixteen rhymed couplets of the arrival of "an attractive young lady" at the heavenly gates. She asks St. Peter if she can enter, and he offers her a hug "with arms opened wide." She rejects the hug, and St. Peter rebukes her for her distrust and prejudice. He then pulls a chain, opening a door beneath the woman's feet, with the result that "[t]he devil embraced this woman on the other side."

On Sunday, May 8, 2005,[1] John Kersey arrived at the church one hour before the scheduled service, and attached a copy of the poem to a bulletin board. A prefatory note attached to the poem stated that it was "One Christian's Response to Allegations of Sexual Harassment." Defendant Patty Wilson, a member of the Staff-Parish Relations Committee, was nearby, and as soon as Mr. Kersey left the

[1] The defendant claims that this actually occurred on May 15.

hallway where the bulletin board was located, she removed the poem.

When Mr. Kersey returned to the hallway, an argument broke between him and two other church members. During the confrontation, Ms. Wilson called the police. A Metro officer arrived promptly, and Ms. Wilson pointed Mr. Kersey out to him and allegedly proclaiming "He wrote a poem that threatened the life of one of our members." Ms. Wilson's husband and the other two church members allegedly heard this utterance. The police then escorted Mr. Kersey from the premises of the church, and the trustees of the church subsequently told him not to return.

II. LEGAL PROCEEDINGS

On June 2, 2005, Mr. Kersey filed a pro se complaint for defamation in the Circuit Court of Davidson County. He claimed that Ms. Wilson's statement spread through the congregation "like a wildfire," that it caused him great mental anguish and emotional suffering, and that it was defamatory *per se*. He asked the court to award him $100,000 in compensatory damages, $50,000 for emotional pain and suffering, and $100,000 in punitive damages. A copy of Mr. Kersey's poem was attached to the complaint.

Ms. Wilson's answer confirmed some of the details of the complaint, but she denied making the statement which Mr. Kersey deemed to be defamatory. She also asked the court to dismiss the complaint without foundation. Mr. Kersey filed several motions including a motion that the trial judge state on the record whether she had any communications with any attorney, party, or witness in the case; a motion that the court order the defendant's attorney to abide by professional ethics, and a motion to amend his

complaint.[2] He also filed eleven subpoenas *duces tecum* against members of the church, not including the defendant, seeking to discover what other people might have been saying about him.

On July 15, 2005, Ms. Wilson filed two motions: a motion to quash the eleven subpoenas *duces tecum*, and a motion to dismiss Mr. Kersey's complaint on the pleadings. The motion to dismiss contended that the complaint was deficient because it "fails to contain sufficient allegations of actual damages and injury from the alleged defamatory words."

During the hearing on the motion to dismiss, Ms. Wilson's attorney discussed the question of damages. He noted that Mr. Kersey did not allege that he had suffered any loss of employment or other economic damages, and no damages other than to his reputation in the church itself, which the attorney attributed to Mr. Kersey's own actions in posting the poem, rather than to any comment Ms. Wilson might have made about it. He also stated that the dispute at bar was really an internal church problem, thus suggesting that the exclusion of Mr. Kersey from the church was beyond the scope of judicial review because of the doctrine of ecclesiastical abstention. *See Presbyterian Church v. Hull Memorial Presbyterian Church*, 393 U.S. 440, 447 (1969); *Watson v. Jones*, 80 U.S. 679, 727 (Wall.) (1872); *Nance v. Busby*, 18 S.W. 874, 880 (Tenn. 1892).

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[2] The proposed amendment added allegations that Ms. Wilson's defamatory statement "was made with malice"; that the trustees of Hillcrest United Methodist Church ordered Mr. Kersey not to return to the church, thereby acting against the advice of the bishop of the Tennessee Conference of the United Methodist Church; and that Mr. Kersey has lost the friendship of several people in the church as a result of Ms. Wilson's statement

For his part, Mr. Kersey repeatedly stated to the court that Ms. Wilson accused him of threatening the life of a church member. He argued that threatening someone's life is a criminal offense and that accusing an individual of committing a crime is defamatory under Tennessee law. Ms. Wilson's attorney noted, however, that Mr. Kersey's complaint alleged Ms. Wilson had actually said that he wrote a poem that threatened the life of a church member, not that he had actually threatened someone's life. Mr. Kersey also claimed damages arising from injury to his reputation in that two factions of the church, acting against the advice of the presiding Bishop, had presented him with a letter of expulsion.

At the conclusion of argument, the court ruled for the defendant. Its action was memorialized in an order filed September 6, 2005, which dismissed the complaint and quashed the subpoenas because they had been rendered moot by the dismissal of the case. The court took the unusual step of ordering the plaintiff "to have no further contact with Hillcrest United Methodist Church or any of its members or officials." This appeal followed.

III. THE JUDGMENT ON THE PLEADINGS

Of the six issues Mr. Kersey raises on appeal, only one directly addresses the propriety of the judgment on the pleadings which was rendered against him. The other five issues are criticisms of the trial judge and the way she handled the court proceedings. In this section, we will address the judgment on the pleadings.[3]

When reviewing an order granting a judgment on the pleadings, *see* Tenn. R. Civ. P. 12.03, we use the same

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[3] Mr. Kersey did not appear for oral argument. We must therefore base our understanding of his position solely upon his brief on appeal.

standard of review as we do for an order granting a Tenn. R. Civ. P. 12.02(6) motion to dismiss for failure to state a claim. *City of Alcoa v. Tennessee Local Government Planning Advisory Committee,* 123 S.W. 3d 351, 355 (Tenn. Ct. App. 2003); *Waller v. Bryan,* 16 S.W. 3d 770, 773 (Tenn. Ct. App. 1999).

Under that standard, we review the trial court's decision *de novo* without a presumption of correctness. *Stein v. Davidson Hotel Co.,* 945 S.W. 2d 714, 716 (Tenn. 1997). We construe the complaint liberally in favor of the non-moving party and take all the factual allegations in the complaint as true. *Leach v. Taylor,* 124 S.W. 3d 87, 90 (Tenn. 2004). We can uphold the grant of the motion only when it appears that the plaintiff can prove no set of facts in support of a claim that will entitle him or her to relief. *Crews v. Buckman Laboratories,* 78 S.W. 3de 852, 837 (Tenn. 2002); *Cook v. Spinnaker's of Rivergate, Inc.,* 878 S.W. 2d 934, 938 (Tenn. Ct. App. 1994).

A. Was The Statement Defamatory?

Mr. Kersey's complaint alleged that Ms. Wilson's utterance defamed him. Libel and slander are both forms of defamation. Libel is written defamation and slander is spoken defamation. *Quality Auto Parts Co., Inc. v. Bluff City Buick Co., Inc.,* 876 S.W. 2d 818, 820 (Tenn. 1994). "The basis for an action for defamation, whether it be slander or libel, is that the defamation has resulted in an injury to the person's character or reputation." *Davis v. The Tennessean,* 83 S.W. 3d 125, 128 (Tenn. Ct. App. 2001). *Quality Auto Parts,* 876 S.W. 2d at 820.

As this court said in *Stones River Motors, Inc., v. Mid-South Publishing Company,* 651 S.W. 2d 713, 720 (Tenn. Ct. App. 1983),

> For a communication to be libelous, it must constitute a serious threat to the plaintiff's reputation. A libel does not occur simply because the subject of a publication finds the publication annoying, offensive or embarrassing. The words must reasonably be construable as holding the plaintiff up to public hatred, contempt or ridicule. They must carry with them an element "of disgrace." (Quoting W. Prosser, Law of Torts, [Section] 111, p. 739 (4th Ed. 1971).

Our Supreme Court has described the elements necessary to establish a prima facie case of defamation as follows: "the plaintiff must prove that (1) a party published a statement;[4] (2) with knowledge that the statement was false and defaming to the other; or (3) with reckless disregard for the truth of the statement or with negligence in failing to ascertain the truth of the statement." *Sullivan v. Baptist Memorial Hospital*, 995 S.W. 2d 569, 571 (Tenn. 1999).

The alleged slander in the present case occurred when Ms. Wilson pointed Mr. Kersey out to the policeman and said "He wrote a poem that threatened the life of one of our members." Although she denies having made the utterance, we must take the allegation as true, and examine whether it is sufficient, in conjunction with other allegations of the complaint, to support a claim for relief.

We first note that it is undisputed that Mr. Kersey wrote the poem, and that the poem was placed where members of the church could see it before it was removed by the defendant. The poem depicted the experiences of "an attractive young lady" after her demise, and it may be

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[4] "Publication" is a term of art meaning the communication of defamatory matter to a third person. *Sullivan v. Baptist Memorial Hospital*, 995 S.W. 2d 569, 571 (Tenn. 1999).

reasonable under the circumstances to assume that it was meant to refer to Pastor Neelley.

We must also note that a poem is a work of the imagination which allows the minds of both the poets and the readers to venture into areas that lie beyond the realm of verifiable facts. Just as the poet is granted "poetic license," so the reader enjoys considerable latitude to interpret the meaning of a poem in a way that matches his or her understanding. Thus, we consider Ms. Wilson's alleged statement that Mr. Kersey's poem amounts to a threat on someone's life to be a matter of opinion, which should not be confused with a statement of fact.

This distinction is important because a statement of opinion does not usually constitute actionable defamation, while a false statement of fact may do so. For example, in *Stones River Motors, Inc., v. Mid-South Publishing Company,* 651 S.W. 2d 713, 720 (Tenn. Ct. App. 1983), a newspaper published a letter from a dissatisfied customer of a used car dealer, which recounted the customers experiences with the dealer, and called the dealer's action a "perfect example of highway robbery in action." The dealer sued for libel, and the trial court granted summary judgment to the customer and the newspaper.

We affirmed, observing that there was no significant dispute as to the facts of the underlying transaction between the customer and the dealer, and that the customer's statement was simply his own characterization of those facts. "Since the statement must be factually false in order to be actionable, comments upon or characterizations of published facts are not in themselves actionable. If the published facts being commented on are true and nondefamatory, the writer's comments upon them are not actionable, even though they are stated in strong or abusive terms. 651 S.W. 2d at 720.

Similarly, in *Greenbelt Cooperative Publishing Association v. Bresler*, 398 U.S. 9, 90 S. Ct. 1537 (1970) (cited in the *Stones River Motors* case, *supra*) the U.S. Supreme Court found that the use of the term "blackmail" to describe the plaintiff's negotiating tactics was not slander when spoken in a heated city council meeting, and not libel when published in the newspaper articles accurately reporting the public debate. The Court reasoned that "the word was no more than rhetorical hyperbole, a vigorous epithet by those who considered [the defendant's] negotiating position extremely unreasonable." 398 U.S. at 14, 90 S. Ct. at 1452.

In *Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 94 S. Ct. 2770 (1974) (also cited in *Stones River, supra)* the Supreme Court held that a union publication describing the plaintiff non-union member as a scab, and therefore "a traitor to his God, his country, his family, and his class" was not actionable. The language cited was derived from a well-known piece of trade union literature, generally attributed to Jack London. The Court reasoned the use of words like "traitor" in that case could not be construed as representations of fact, but rather as "mere rhetorical hyperbole, a lusty and imaginative expression of the contempt felt by union members towards those who refused to join." 418 U.S. at 286, 94 S. Ct. at 2782.

Interestingly, in all of the above cases, the language uttered by the defendants about the plaintiffs, could, if taken literally, impute to them the commission of a crime. However, the courts held in each of them that the use of the terms "highway robbery," "blackmail" and "traitor" were expressions of opinion as to the plaintiffs' behavior rather than accusations that they had committed actual crimes, and that those expressions were therefore protected speech.

In the present case, Mr. Kersey argues that since it is a crime to threaten someone's life, Ms. Wilson's statement was defamatory *per se*. In support of this position, he cites the case of *Brown v. Newman,* 454 S.W. 2d 120 (Tenn. 1970). We noted that in the cited case, the court parsed the language of the defandants' statement very closely before concluding that it was not defamatory. The case involved a pamphlet about a zoning dispute, which declared "The Skids are Greased at City Council." The court found the pamphlet was not defamatory because it merely implied that

> pressure, in the form of political influence' had been brought to bear on certain councilmen in order to expedite matters-not that any Councilmen were bribed. On the other hand, if the language has been 'the palms are greased at City Council,' then the pamphlet would have been defamatory per se and actionable as such.

454 S.W. 2ds at 122.

If we apply the same sort of analysis to Ms. Wilson's alleged statement, it appears to us that she was not accusing Mr. Kersey of committing a crime, but merely giving excited expression to her opinion of the underlying meaning of his poem.

We do mean to imply, however, that a statement couched in the form of an opinion can never be found to be defamatory, for the Supreme Court has explicitly held that there is no wholesale defamation exemption to every statement that might possibly be label "opinion." *Milkovich v. Lorain Journal, Inc.,* 479 U.S. 1, 18, 110 S.Ct. 2695, 2705 (1990). In that case, that Court noted that "expressions of 'opinion' may often imply an assertion of objective fact." *Ibid.* (assertion by newspaper sports columnist that wrestling coach lied under oath was actionable even though expressed

as opinion, because the columnist was present at the relevant proceedings, and the truth of his assertion was capable of verification).

The rule which has been adopted to deal with such situations is that a statement of opinion is actionable only if it implies the allegation of undisclosed defamatory facts as the basis for the opinion. *Revis v. McClean,* 31 S.W. 3d 250, 253 (Tenn. Ct. App. 2000)(citing *Restatement (2d) of Torts* [Section] 566 (1977 Conversely, "where there is no false representation of fact, one may not recover in actions for defamation merely upon the expression of an opinion which is based upon disclosed, nondefamatory facts, no mater how derogatory it may be." *Windsor v. Tennessean,* 654 S.W. 2d 680, 685 (Tenn. Ct. App. 1983).

In the present case, Ms. Wilson has been accused of saying that Mr. Kersey "wrote a poem that threatened the life of one of our members." We do not believe that such a statement is equivalent to saying that he threatened someone's life, which under the circumstances might have amounted to an allegation of fact. Nor does it carry an implication that Mr. Kersey threatened anyone's at any other time or in any other manner than by writing a poem. The alleged statement is clearly an opinion, and we therefore agree with the trial judge that it is not defamatory.

B. THE QUESTIONS of DAMAGES

Even if we assume, *arguendo,* that the content of Ms. Wilson's statement could be considered defamatory, Mr. Kersey still would not be entitled to recover without alleging compensable damages. Under the common law of defamation, some words were considered to be so injurious upon their face that no actual proof of damages was required to make them actionable. The existence of injury to reputation was presumed from the fact of publication. *See*

Memphis Publishing Co., v. Nichols, 569 S.W. 2d 412, 416, 421 (Tenn. 1978). These defamations *per se* included allegations that the plaintiff had committed a crime involving moral turpitude. *Dunnebacke v. Williams,* 381 S.W. 2d 909, 911 (Tenn. 1964); *Knoxville Publishing Co. v. Taylor,* 215 S.W.2d 27, 29 (Tenn. Ct. App. 1948).

In the case of *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, (4 S.Ct. 2997 (1974) the United States Supreme Court reached a different conclusion. The court cited what it called "an oddity of tort law," which "allows recovery of purportedly compensatory damages without evidence of actual loss." 418 U.S. at 349, 94 S.Ct. at 3011. Noting that presumed damages for defamation could "inhibit the exercise of First Amendment freedoms," the court declared that they should no longer be permitted. *Ibid.* In *Memphis Publishing Co. v. Nichols, supra,* the Tennessee Supreme Court discussed the *Gertz* case and approved of its elimination of presumed damages. Damages from false or inaccurate statements can no longer be presumed; actual damages must be sustained and proven in all defamation cases. *Memphis Publishing House* at 421; *Davis v. The Tennessean,* 83 S.W. 3d 125, 128 (Tenn. Ct. App. 2001).

Mr. Kersey's complaint refers in the most general terms to damages in the form of loss of reputation, but he does not offer any allegations of fact that could lead the court to attribute any such loss to Ms. Wilson's alleged remark rather than to the behavior that she was commenting on. The only damage that Mr. Kersey asserts with any degree of specificity that he has suffered is the claim that Ms. Wilson is somehow responsible for the decision of the church to expel him from its midst. However, our courts have long held that they lack the authority to regulate matters involving membership in churches and other religious bodies. Over one hundred and thirty years ago, the United States Supreme Court described in general terms the limitations that the

courts must observe when presented with disputes between religious bodies and their members:

> The rule of action which should govern the civil courts, founded in a broad and sound view of the relation of church and state under our system of laws, and supported by a preponderating weight of judicial authority is, that, whenever the questions of discipline, or of faith, or ecclesiastical rule, or custom, or law have been decided by the highest of these church adjucatories to which the matter has been carried, the legal tribunals must accept such decision as final, and as binding on them, in their application to the case before them.

Watson v. Jones, 80 U.S. 679, 727 (13 Wall.) (1872). An early Tennessee case of similar import is *Nance v. Busby*, 18 S.W. 874 (Tenn. 1892). Consequently, the courts cannot inquire into the reasons for the church's decision to expel Mr. Kersey.

The courts have reasoned that people have an unquestioned right to form voluntary religious associations and to organize the governance of their congregations in whatever way they deem appropriate. By joining such religious organizations, individuals are consenting to their governing structures, and bind themselves to submit to their rules. "But it would be a vain consent and would lead to the total subversion of such religious bodies, if any one aggrieved by one of their decisions could appeal to the secular courts and have them reversed." *Watson v. Jones* at 679. *See also Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U. S. 696, 711-712, 96 S. Ct. 2372, 2381 (1976); *Nance v. Busby*, 18 S.W. 874 (Tenn. 1892); *Martin v. Lewis*, 688 S.W. 2d 72, 74 (Tenn. App. Ct. 1985). *Tidman v. Salvation Army*, No. 01-A-01-9708-CV003080, 1998 WL

391765 (Tenn. App. Ct. July 15, 1998)(no Tenn. R. App. P. 11 application filed).

Even if Ms. Wilson's alleged statement played some role in the church's decision, it would nontheless be protected as part of the church's internal disciplinary proceeding. "In cases involving defamation torts by church officials, Tennessee courts must look at whether the slanderous or libelous statement was made during the course of ecclesiastical undertaking." *Ausley v. Shaw*, 193 S.W. 3d 892, 859 (Tenn. Ct. App. 2005). Generally, disputes based on otherwise defamatory statements made in the context of a religious disciplinary proceeding are not resolvable by the courts. *Ashley v. Shaw*, 193 S.W. 3d at 859; *Hiles v. Episcopal diocese of Massachusetts*, 773 N.E. 2d 929 (Mass. 202)(holding that letter accusing minister of misconduct started and was inextricable part of church's internal disciplinary procedure and, therefore, protected by the First Amendment). *See also Callahan v. First Congregation Church of Haverhill, 808 N.E. 2d 301, 313-14(Mass. 2004)*(holding that statements made in an ecclesiastical complaint, investigation, and proceeding regarding the plaintiff who was excommunicated derived solely from actions that are inextricably part of the church disciplinary process and claims based on those statements were outside the jurisdiction of the courts). As to internal disciplinary proceedings, the courts will not dictate to a congregation or church officials that they may not freely speak their minds. *Yaggie v. Indiana-Kentucky Synod Evangelical Lutheran Church in America, 860 F. Supp. 1194, 1199 (W.D. Ky.* 1994)

Mr. Kersey himself established the relationship between the poem he wrote and the internal church proceedings against him by attaching a note that the poem was "One Christian Response to Allegations of Sexual Harassment." The defendant Patty Wilson was a member of

the church's Staff-Parish Relations Committee at the time she removed the poem from the church bulletin board and allegedly made the remark that Mr. Kersey complained of. The doctrine of ecclesiastical abstention prohibits us from looking behind a church's decision about its own membership. We are accordingly unable to consider the impact (if any) that Ms. Wilson's utterance may have had on the decision to expel Mr. Kersey, and we are thus precluded from considering the only specific allegation of damages he has raised.

IV. THE COURT'S INJUNCTION

As we stated above, the trial court ordered the plaintiff, *sua sponte*, "to have no further contact with Hillcrest United Methodist Church or any of its members or officials." The court did not ask the parties to submit any evidence or argument either in favor of or against such an injunction.

In his appellate brief, Mr. Kersey objects to the court's order on the grounds that it interferes with his ongoing efforts to gather evidence as to whether other church members may have slandered him, and to initiate new lawsuits on the basis of such evidence. The defendant did not address the injunction on appeal, other than to lump it with Mr. Kersey's other issues as not requiring a response because they were unrelated to the motion to dismiss on the pleadings.

The effects of the injunction are actually quite a bit broader than Mr. Kersey describes, however, for if strictly followed they would prevent him from associating with any church members for any purpose whatsoever, even if the other person agreed to or welcomed that contact. We note that the pleadings suggest that Mr. Kersey's aggressive approach towards church members, particularly women, has

been uncomfortable for them, and that his determination to use the courts for vindication of purely personal grievances worsens those problems. However specific requests for judicial orders banning unwanted contact, based on necessary proof, would be more appropriate to deal with the problem.

A court's equitable power to grant injunctions should be used sparingly, especially when the activity enjoined is not illegal, when the injunction is not requested, and when it is broader than necessary to achieve its purposes. *See Earls v. Earls,* 42 S.W. 3d 877 (Tenn. Ct. App. 2000);*Terry v. Terry,* M1999-01630-COA-R3-CV, 2000 WL 863135 (Tenn. Ct. App. June 29, 2000)(perm. app. denied Jan. 8, 2001).

In the present case, the trial court's final order includes a very broadly drafted injunction that severely inhibits Mr. Kersey's freedom of association beyond a ban on attending the church in question. In sum, it appears to us that the court's injunction is impermissibly broad, and we hereby order it dissolved but without prejudice to the defendant asking the court for injunction relief pursuant to Tenn. R. Civ. P. 65 and subject to the requirements of specificity in terms and reasonable detail required by Tenn. R. Civ. P. 65.02.

V. OTHER ISSUES

The four other issues raised by Mr. Kersey are basically allegations of bias and wrong doing on the part of the trial judge and opposing counsel. Those allegations are couched in the form of questions and unsupported by significant evidence in the record.[5]

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[5] The Issues for Review are stated in Mr. Kersey's appellate brief as follows:

We affirm the judgment of the trial court dismissing Mr. Kersey's complaint, but vacate that portion of its order forbidding him from having any further contact with the church members or officials. We remand this case to the Circuit Court of Davidson County for any further proceedings necessary. Tax the costs on appeal to the appellant, John C. Kersey.

/S/ _____
PATRICIA J. COTTRELL, JUDGE

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1. Did the trial court err in dismissing Plaintiff's defamation case on the pleadings.
2. Was the trial judge guilty of judicial misconduct by ignoring unethical conduct of counsel for several potential defendants while chastising the Plaintiff for joking with a clerk before the hearing.
3. Did the trial judge demonstrate prejudice against Plaintiff by remarks she made at the hearing.
4. Even though the trial judge denied having any ex parte communications with either opposing attorney or any potential witness or party, was her denial credible when she acknowledged knowing the same people who were present, as observers, in the courtroom.
5. Did the trial judge commit judicial misconduct when, on her own initiative, without any evidence whatever before the court, she ordered plaintiff not to have any contact with anyone at the church?
6. Did the trial judge commit judicial misconduct when she delayed, for almost two weeks, signing the Order of Dismissal in an obvious attempt to aid the potential defendants in the running of the six-month statute of limitations for slander.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JOHN C. KERSEY V. STATE OF TENNESSEE
[SIC]

Circuit Court for Davidson County
No. 05C-1633

No. M2005-02106-SC-R11-CV

FILED APR. 16, 2007

ORDER

Upon consideration of the pro se application for permission to appeal of John C. Kersey, and the record before us, the application is denied.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JOHN C. KERSEY v. PATTY WILSON

Circuit Court for Davidson County

No. 05C-1633

No. M2005-02106-SC-R11-CV

FILED APR. 23, 2007

ORDER

Upon consideration of the pro se application for permission to appeal of John C. Kersey, and the record before us, the application is denied.

PER CURIAM

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JOHN C. KERSEY v. PATTY WILSON

Circuit Court for Davidson County
No. 05C-1633

No. M2005-02106-SC-R11-CV

FILED MAY 4, 2007

ORDER

On April 16, 2007, this Court entered an Order denying the application for permission to appeal filed by John C. Kersey. On April 23, 2007, this Court entered a subsequent Order which corrected a clerical error in the case style of the Order entered April 16, 2007. Thereafter, this Court received a document filed by Mr. Kersey on April 19, 2007, styled "Motion to Stay Mandate". After careful review, we have concluded that the motion is without merit and is therefore DENIED.

PER CURIAM

IN THE COURT OF APPEALS OF TENNESSEE AT NASHVILLE

JOHN C. KERSEY v. PATTY WILSON

Circuit Court for Davidson County
No. 05C - 1633

No. M2005-02106-COA-R3-CV

(Filed Oct. 25, 2005)

ORDER

The Appellant has filed a Motion to Consider Post Judgment Facts. This court's review is generally confined to those facts established by the evidence in the trial court and set forth in the record on appeal. Tenn. R. App. P. 13 (c). Consideration of other facts pursuant to Tenn. R. App. P. 14 is contemplated only when those facts occur after the judgment appealed from, are related to the merits and are not genuinely disputed. Tenn. R. App. P. 14, *Advisory Commission Comments.* The facts presented by the appellant are not appropriate for consideration pursuant to Tenn. R. App. P. 14.

It is, therefore, ordered that the Motion to Consider Post Judgment Facts be denied.

/S/_____
WILLIAM B. CAIN, J.

ASSUMPTIONS

At the top of the stairs, the attractive young lady did arrive,
Then politely asked St. Peter if she could come inside.

His loving feelings, he felt no need to hide.
The gate, with a smile, he opened wide.

She sternly walked onto the paradise ground,
Convinced her place, she had finally found.

With arms opened wide he offered her a hug.
His offer she declined with a visible shrug.

Abruptly she pulled away knowing something was awry;
Her distrust plainly evident from the look in her eye.

What gives you the right such liberties to take?
St. Peter's face was grim, when at last he spake.

JESUS, to the woman at the well, did embrace.
The love of GOD could be seen on HIS face.

HE wished only for the comfort of the FATHER to convey
And determined HE was that no man stand in HIS way.

On GOD'S children, HIS hands were often laid,
Never once hesitating, nor intending to degrade.

Prejudice like yours is not tolerated in this heavenly place.
Your words convey more than simply poor taste.

The message HE left in hope that all would receive,
By your actions it is clear, that you have failed to believe.

St. Peter, though saddened and with a tear in his eye,
Pulled a red chain, which hung from the ceiling nearby.

An unseen door below her feet did open wide.
The devil embraced this woman on the other side.

If we continue to wait for HIS love to show,
We may come to dwell in the regions below.

To conclude that evil is behind any kindness shown,
May someday deprive us of a heavenly home.

No doubt you will assume, that out of spite this is done,
But I'll continue to pray that someday, to you, this message will come.

By: John C. Kersey

PORTIONS of TRANSCRIPT of HEARING
(Citations are to page numbers of Transcript)

Respondent's Attorney (Mr. Cate):

"Then he says -- and here comes the gravamen of his action, the basis for what he says was defamation of character and slander: Next, [Respondent], with malice in her eyes and venom in her voice, loudly proclaimed by pointing her finger at [Petitioner], quote, he wrote a poem that threatened the life of one of our members, close quote. Now, that's the entire allegation of defamation of character and slander in this matter." (Tr. P.10).

'Now, he doesn't say, he doesn't allege that the [Respondent] said, now he threatened her life, said, he wrote a poem that threatened her life. This was her interpretation." (Tr. P. 10).

"Other than the fact that he is no longer welcome at the church by action of another group of people, what has he alleged in terms of damages?" (Tr. P. 12).

THE COURT: Mr. Kersey, I don't believe you've been in this court before.

Mr. KERSEY: No your Honor. (Tr. P. 14)

THE COURT: I will tell you that I looked at your motion where you wanted me to state on the record that I've had no communications with these parties, the attorneys or witnesses, and I have not. And I can assure you that your motion to make these lawyers abide by professional ethics, that this Court always makes lawyers abide by professional ethics. (Tr. 14 - 15)

MR. KERSEY: I would ask the Court, then, based upon the pleadings that have been filed, based upon the statements that had been made and those pleadings by Mr. John Wagster, is it the Court's opinion that Mr. Wagster has abided by professional ethics? Because you said that you always required attorneys. I don't think he has. (Tr. 15).

THE COURT: Well, I told you what this Court's policy is, and until something takes place in this courtroom or in some pleadings, then, at that time I'll make some determination. I just wanted to clarify what this Court's position is. (Tr. 15).

THE COURT: Does this Court have the power to require the Methodist Church to let you attend? I don't think so.

MR. KERSEY: Your Honor, this case is not about me trying to return to the church.

THE COURT: So you're perfectly willing not to go back to that church?

MR. KERSEY: That's a decision I'll make in the future, Your Honor. And in all probability, this church is going to be sued once discovery is complete. (Tr. 18, 19).

MR. KERSEY: Your Honor, Rule 22.10 of the local rules say that if you seek a protective order or seek to quash a subpoena, you must state with particularity the grounds for that motion and that motion must be accompanied by affidavit or other evidence. None of that has been filed. There have been no affidavits. There's nothing that's been filed to support it.

They have managed so far to use up a little over half the Statute of Limitations. There is a six-month Statute of Limitations in slander. (Tr. 22 - 23).

THE COURT: Mr. Kersey, other than your allegations of your good reputation, what damages have you suffered?

MR. KERSEY: Your Honor, I can't tell this Court in greater detail until I complete discovery. And unless I'm mistaken, one of the purposes of discovery is to establish the extent of damage. And what is so mind boggling to me is to hear or receive a question, what have you suffered other than damage to your reputation. (Tr. 29, 30).

THE COURT: Mr. Kersey, this Court is well aware of your history. And this Court is being very careful this morning to afford you every opportunity to be heard. Now, there are a lot of allegations that have no basis in law, and these people that are in the courtroom today have the absolute right to decide who comes to their church. Would you agree?

MR. KERSEY: No, Your Honor, I would not.

THE COURT: Well, then, let me rephrase my question. Wouldn't it be a better solution for you to find another church home? (Tr. 30).

MR. KERSEY: That is not a solution to destroying my reputation. (Tr. 31).

THE COURT: Mr. Kersey, I believe you destroyed your own reputation a long time ago. (Tr. 31).

THE COURT: The Court's going to do something unusual this morning, Mr. Kersey. I'm going to grant the motion to dismiss. But in addition, I'm going to order that

you have no further contact with this church or anyone in it. Do you understand this Court's order?

MR. KERSEY: Yes, Your Honor. And I will appeal it and we'll see what the Court of Appeals has to say.

THE COURT: Mr. Kersey, in addition, don't ever be rude to anyone in the Clerk's Office in Davidson County again or attempt to tell a blond joke. Do you understand this Court's order?

MR.KERSEY: Would the Court be more specific as to what I -- how I have offender a member of --

THE COURT: Well, you were called down this morning in the Clerk's Office for inappropriate behavior and being rude, and then you attempted to tell a blond joke to someone.

MR. KERSEY: Your Honor, I wasn't called down in the Clerk's Office by anybody.

THE COURT: Okay. It's my understanding --

MR. KERSEY: I want to know --

THE COURT; It's my understanding that you were asked to be more polite, and I just want you to know they work for the system and that you're going to treat them with the same respect that I've treated you this morning.

MR. KERSEY; I want the Court to know that's a false statement. I wasn't called down by anybody.

THE COURT; Okay. Mr. Kersey, all I'm telling you is that you better treat those people with the utmost respect at any time.

MR. KERSEY; I will go and ask who called me down.

THE COURT; No, I don't want you to go and ask anything, Mr. Kersey. I just want you to treat everyone in this court system with the appropriate respect when you come in this building. I don't want you telling jokes, I don't want you making demands, I want you to use "please" and "thank you' and be courteous. That's all I'm saying, Mr. Kersey.

MR. KERSEY: I'd like to be accorded the same thing by Mr. Wagster, Your Honor.

THE COURT; I have never known these two gentlemen to be rude Mr. Kersey. If, in fact, however, they should mistreat you, the Court will be glad to admonish them. (Tr. 31 - 33).

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

JOHN C.KERSEY,
Plaintiff

V. File No.
M2005-02106-SC-R11-CV

PATTY WILSON,
Defendant

Circuit Court for Davidson County No. 05C-1633
Court Of Appeals No. M2005-02106-COA-R3-CV

MOTION TO STAY MANDATE

Comes the Plaintiff, John C. Kersey, pursuant to Rule 42 (c) of the Tennessee Rules of Appellate Procedure and moves this court to stay the mandate in this case.

Plaintiff hereby notifies this Court of his intention to file a Petition for a Writ of Certiorari in the United States Supreme Court in this case. Pursuant to Rule 13 of the Rules of the United States Supreme Court such Petition must be filed within 90 days of the entry of this Court's Order denying a discretionary appeal.

Plaintiff moves that this court stay the clerk's mandate during this 90 day period. In addition, if the United States Supreme Court should grant Plaintiff the Writ of Certiorari, then the

mandate would extend until the final decision of the United States Supreme Court.

Plaintiff wants this court to know that he intends to base his Petition for a Writ of Certiorari in part by raising the issue of whether, by consenting to disbarment 17 years ago, Plaintiff lost his right to due process of law guaranteed by the United States Constitution as to all future legal proceedings in this state

Plaintiff requests that this court grant him the stay of mandate in this case.

This the 17th day of April, 2007.

/S/_____
JOHN C. KERSEY

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

Case No. M2005-02106-COA-R3-CV

JOHN C. KERSEY

Plaintiff-Appellant

v.

PATTY WILSON,

Defendant-Appellee

APPELLANT'S MOTION TO CONSIDER POST JUDGMENT FACTS

Comes the Appellant, John C. Kersey, and moves, pursuant to Rule 22 of the Rules of Appellate Procedure, this court to consider the attached, sworn statement, of Post Judgment facts. Appellant would show the Court, that the facts stated therein relate to judicial misconduct of the trial judge which is described in detail in Appellant's brief. Appellant's Brief is being filed concurrent with the filing of this motion.

/S/ JOHN C. KERSEY

APPELLANT'S POST JUDGMENT AFFIDAVIT

Comes the Appellant, John C. Kersey, and declares, under penalty of perjury, that the following facts are true:

1. On August 19, 2005 I appeared at the location of the Third Circuit Court well in advance of the hearing set to begin at 9:00 a.m.
2. As I reviewed the posted docket, I noticed that several motions in this case were set to be heard late in the docket, I believe position number 30. I also noticed that the Defendant's Motion to Dismiss was not on the docket. This was before the office of the Circuit Court Clerk had opened.
3. I went to a chair near the first window of the clerk's office and I sat and waited for the office to open.
4. Shortly thereafter, I notice a deputy clerk name (sic) Karen approach from the hall. This clerk had waited on me previously and she had been very nice. When Karen open (sic) the window, I inquired as to why the Motion to Dismiss was not on the docket. Since Karen was fairly new to the job, she asked for the assistance of two other clerks.
5. As I stood waiting for the other clerks to discover why the motion was not on the docket, I began a conversation with Karen. I told her that since she was "somewhat blonde" (she has blonde highlights in her hair), I loved blonde jokes.
6. I then told Karen two blonde jokes and I did not use the term "dumb Blondes." After the second joke Karen remarked that she "really liked that one."
7. My conversation with Karen lasted 4 to 5 minutes and then one of the other clerks told me that he was going to correct the docket and I followed him.
8. At no time did Karen, who I later learned was Karen Mallory, seem offended my either of my jokes.

9. Later that afternoon I called Karen and was prepared to apologize to her if I had offended her. During the conversation, Karen told me that she was not the least bit offended and she did not say anything to Judge Barbara Haynes. Karen also told me that she was not aware that anyone had said anything to Judge Haynes.

10. I later talked to the chief Clerk, Richard R. Rooker, about the statements made by Judge Haynes. Mr. Rooker advised that he was unable to determine that any one of his clerks had talked to Judge Haynes.

11. Richard Rooker told me several days later that he had met with Judge Haynes and she advised that one of her staff members had received an anonymous telephone call about the jokes before the court hearing.

12. I prepared two Affidavits, one for Karen Mallory and one for Richard Rooker to sign in accordance with the statements that each had made to me. I personally delivered those Affidavits to Mr. Rooker.

13. I was told several days later, that both Karen Mallory and Richard Rooker had been "advised" not to sign the affidavits. The proposed Affidavits are attached hereto and marked Exhibits 1 and 2.

14. When I went into the courtroom on August 19, 2005, I had a seat and I soon noticed Mr. George Cate, Appellee's attorney. I told Mr. Cate about his Motion not being posted on the posted docket. I also told Mr. Cate that the clerk had assured me that the motion would be heard and I thought the clerk had handwritten the Motion on the docket.

15. Several minutes before the Judge appeared, I saw attorney John Wagster enter to my right and have a seat across the room from where I was seated.

16. At the conclusion of the hearing in my case, when I got up and started to leave the courtroom, I noticed for the first time 8 to 10 members of the Hillcrest United Methodist Church on the back row. These observers included several of the people that I had subpoenaed to depose.

17. On or about August 27, I received a copy of an Order of Dismissal prepared by attorney George Cate. The certificate of service was dated August 26.

18. On September 6th I called the office of the Clerk and inquired about the Order of Dismissal and was told that the clerk had not received the order from the Judge. I then called the Judge's office and talked to a secretary. She advised that the order had just been signed and she would mail me a copy that afternoon.

19. Several days later I received a copy of the signed order in an envelope from Judge Barbara Haynes. the envelope was postmarked September 8, 2005. a copy of the envelope is attached and marked as exhibit 3.

Dated this 16th day of October, 2005.

/S/ JOHN C. KERSEY

Sworn to and subscribed before me a Notary Public for the State of Tennessee, this the 20th day of October.

/s/ NOTARY PUBLIC